

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

AMAZON.COM, INC.

Plaintiff,

v.

STRAIGHT PATH IP GROUP, INC.,

Defendant.

Civil Action No. 1:15-cv-0682-AJT-TCB

**STRAIGHT PATH IP GROUP, INC.’S MEMORANDUM OF LAW IN SUPPORT OF
ITS MOTION FOR CLARIFICATION OF ORDER OR, IN THE ALTERNATIVE
JOINDER OF LG PURSUANT TO FED. R. CIV. P. 20**

Straight Path IP Group, Inc. (“Straight Path”) respectfully submits this memorandum of law in support of its motion for clarification of the Court’s Consent Order Severing Claims Against Amazon Instant Video Service from C.A. No. 1:13-CV-0934 [(the “934 Action”)] to be Resolved Together with the Declaratory Judgment Claims in C.A. No. 1:15-cv-0682 [(the “682 Action”)] [Dkt. No. 75] (hereinafter, the “Consent Order”), dated August 26, 2016, or in the alternative, joinder of LG Electronics, Inc., LG Electronics U.S.A., Inc., and LG Electronics MobileComm U.S.A., Inc. (collectively, “LG”), and Vizio, Inc. (“Vizio”) pursuant to Fed. R. Civ. P. 20.

I. Clarification of the Order

Straight Path brought a patent infringement action in 2013 against TV manufacturers including LG and Vizio in C.A. No. 1:13-CV-0934. That Action is currently pending before this Court. On October 22, 2014, Amazon.com, Inc. moved in the 934 Action to intervene and sever and stay. Dkt. No. 155, 934 Action. On November 4, 2014, the Court ordered a stay of the 934 Action pending an *inter partes* review of Straight Path's patents instituted by parties that included the TV manufacturers. The 682 Action was also stayed pending *inter partes* review. Dkt. No. 62, 682 Action. The stays were lifted on August 21, 2017.

On August 26, 2016, while the two Actions were stayed, the Court issued the Consent Order that is the subject of this Motion. Dkt. No. 75, 682 Action; Dkt. No. 212, 934 Action. The Order directed:

- (1) Straight Path's claims against defendants in the 934 action directed to Amazon Instant Video shall be severed, and shall instead be resolved together with Amazon's related declaratory judgment claims and any infringement counterclaims Straight Path may assert in the 682 action; and
- (2) The 682 Action shall not be consolidated with the 934 action for pre-trial purposes or otherwise.

Id. at 2.

Straight Path believes that the Consent Order is abundantly clear in that its claims against the "defendants in the 934 action," (emphasis added) which include LG and Vizio, were severed; in other words, LG and Vizio are parties to the 682 Action.

However, following the lengthy stay, LG and Vizio are now claiming that they are not part of the 682 Action and are refusing to provide discovery, at great prejudice to Straight Path.

Straight Path thus requests that the Court clarify its Consent Order and confirm that LG and Vizio are parties to the 682 Action.

II. Joinder of LG Under Fed. R. Civ. P. 20

In the alternative, Straight Path moves to join LG and Vizio as parties to the 682 Action pursuant to Fed. R. Civ. P. 20 (“Rule 20”). Under Fed. R. Civ. P. 21, the court may add a party at any time on motion or on its own.

A. Permissive Joinder of LG and Vizio Under Rule 20

LG and Vizio may be joined to the 682 Action pursuant to Rule 20(a)(2), which states that a party may be joined as a defendant if “(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action.” Both of these factors are satisfied with respect to LG and Vizio.

Straight Path’s right to relief against LG and Vizio arises out of the same transaction, occurrence, or series of transactions or occurrences, as its claims against Amazon. Indeed, the LG and Vizio TVs are the direct infringers.

III. Conclusion

Straight Path respectfully requests that the Court clarify its Consent Order to confirm that LG and Vizio are parties to the 682 Action, or, in the alternative, join LG and Vizio as parties pursuant to Rule 20.

Date: November 3, 2017

Respectfully submitted,

**MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO PC**

By /s/ Craig C. Reilly

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd of November, 2017, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

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